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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE MERLYN KRONG,

Defendant and Appellant.

G036290

(Super. Ct. No. 05HF0497)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Susanne S. Shaw, Judge. Affirmed.

Kathryn Roth-Douquet, under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, Scott C. Taylor, Deputy
Attorney General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Jesse Merlyn Krong appeals from the denial of a motion to suppress evidence. The evidence in question, a tin containing methamphetamine, was found during a patdown search following a traffic stop. We affirm the judgment. Defendant's detention was not unduly prolonged and the officer could conduct a patdown search because of defendant's answer to a question about weapons.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The following summary of the facts is drawn from the testimony at the suppression hearing. About 7:47 p.m. on February 19, 2005, Irvine Police Officer Justin Russell stopped a pickup truck driven by defendant because it did not have a license plate light. When Officer Russell got closer, he noticed a plastic cover over the license plate obstructed the numbers. (The lack of a license plate light violates Vehicle Code section 24601, and a cover over the license plate violates Vehicle Code section 5201, subdivision (g).)

Defendant appeared to be "nervous, somewhat anxious," and was sweating although it was a cool February evening. Officer Russell asked defendant for his driver's license, registration, and proof of insurance. Defendant had difficulty locating his driver's license, and almost gave Officer Russell his bank card instead. Defendant made very little eye contact with Officer Russell, and did not provide proof of insurance.

Officer Russell asked defendant if he had any prior traffic tickets or arrests. Defendant admitted a prior traffic ticket and a prior arrest for cocaine possession. Defendant stated he was uncertain whether these matters had been resolved.

Officer Russell called for backup; when the backup officer arrived, Officer Russell asked defendant to step out of the truck. Defendant complied, and Officer Russell asked whether he had any weapons, knives, drugs, or guns. Defendant replied, "I don't think so, I'm not sure." At some point either before or after the backup officer

arrived, Officer Russell ran a computer check on defendant, which revealed no outstanding warrants.

Defendant declined Officer Russell's request to consent to a search. Officer Russell then conducted a patdown search of defendant. Officer Russell felt a hard object in defendant's right front pants pocket. Defendant initially said he did not know what the object was, then said "it's nothing, it's not a weapon." Defendant attempted to pull away from Officer Russell. Officer Russell told defendant to relax and not pull away. Officer Russell continued the patdown, and felt a hard object in defendant's left front pants pocket, which he believed was a folding pocket knife. Defendant denied the object in his pocket was a knife. He then consented to have Officer Russell remove the object from his pocket; the object was, in fact, a folding pocket knife. Defendant said he forgot it was there, but he had been using it while working that day.

Officer Russell also questioned defendant about the object in his front right pants pocket. Defendant said the object was a Home Depot tin and was not a weapon. He consented to removal of it by Officer Russell. The officer then asked defendant what was in the tin; defendant said there was "a little bit of speed in there." Officer Russell opened the tin and found a blue straw and two rolled-up baggies containing a substance which appeared to be methamphetamine.

Defendant was charged with one count of possession of a controlled substance. (Health & Saf. Code, § 11377, subd. (a).) Defendant filed a motion to suppress evidence, pursuant to Penal Code section 1538.5. Following a hearing, the trial court denied the motion to suppress: "I think it's clear from the testimony that there was some problem with the license plate and some cover. This happened at night. I think the officer's testimony is credible as to the reasons for the original stop. I think the district attorney has articulated the totality of events that explain each of the items that happened, rather than viewing them each individually as the defense does. [¶] I think there was

reasonable cause involved here and that what was done is appropriate and therefore I am going to deny the [section] 1538.5 motion.”

Defendant then pleaded guilty and was placed on three years’ formal probation. Defendant was also ordered to pay a restitution fine, a controlled substance lab fee, a probation revocation restitution fine, and a security fee.

DISCUSSION

“The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Defendant and the Attorney General agree Officer Russell’s initial traffic stop of defendant’s vehicle was reasonable. A traffic stop investigation must be limited in scope and duration. (*Florida v. Royer* (1983) 460 U.S. 491, 500.) Investigative activities beyond the original purpose of a traffic stop, including, but not limited to, warrant checks, are permissible if they do not unnecessarily prolong the stop. (*People v. Brown* (1998) 62 Cal.App.4th 493, 498.) An individual subject to a proper traffic stop may be questioned on an unrelated subject without violating the Fourth Amendment. (*People v. Gallardo* (2005) 130 Cal.App.4th 234, 239; *United States v. Shabazz* (5th Cir. 1993) 993 F.2d 431, 436.)

When defendant provided the answer “I don’t think so, I’m not sure” to Officer Russell’s question about his possession of drugs or weapons, Officer Russell was justified in extending the search, both temporally and physically, to ensure his safety and the safety of the backup officer. (*Terry v. Ohio* (1968) 392 U.S. 1, 30-31.) The issue before us, therefore, is whether the traffic stop was unduly prolonged before Officer Russell questioned defendant regarding whether he had any drugs or weapons.

Defendant argues approximately 18 minutes passed from the time Officer Russell initiated the traffic stop until the methamphetamine was discovered. We do not read the record this way, however. An event chronology, apparently produced by the Irvine Police Department and admitted as exhibit A at the hearing on the motion to suppress, shows the initial traffic stop began at 7:47 p.m. A search of defendant's truck occurred 18 minutes later at 8:05 p.m. But the methamphetamine was discovered during the patdown search. The patdown search is not recorded on the event chronology. Nothing in the appellate record indicates how much time passed between the patdown search and the vehicle search. Officer Russell's testimony was that he asked defendant to step out of the truck immediately after the backup officer arrived, at 7:53 p.m., and then asked defendant about weapons, knives, guns, or drugs. The six minutes between the initiation of the traffic stop at 7:47 p.m. and the time Officer Russell asked defendant to step out of the truck at 7:53 p.m. was not unduly long. Therefore, we conclude the trial court did not err in denying the motion to suppress.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.